



Health and Community Care Committee

30th Meeting, 2001

Wednesday 5 December 2001

The Committee will meet at 9.30 am in Committee Room 1

1. **Items in private:** The Committee will consider whether to take items 5 and 6 in private.
2. **Community Care and Health (Scotland) Bill (Stage 2):** The Convener to move (S1M–2500)—

That the Health and Community Care Committee consider the Community Care and Health (Scotland) Bill at Stage 2 in the following order: sections 8 and 9, sections 10 to 14, sections 15 to 18, sections 1 to 7, sections 19 to 22, the schedule, sections 23 and 24.

3. **Scottish Public Sector Ombudsman Bill (Stage 1):** The Committee will take evidence from—

Mr Michael Buckley, Scottish Parliamentary and Health Service Ombudsman

Danny Crawford, Acting Director, Scottish Association of Health Councils

Dr James Dyer, Director and Professor Juliet Cheetham, Social Work Commissioner, Mental Welfare Commission

4. **Petitions PE283, PE 370 and PE 406:** The Committee will consider a paper on petitions.
5. **Appointment of Adviser:** The Committee will consider a list of potential advisers on Organ Donation for Transplantation and the order of preference
6. **Tobacco Promotion and Advertising (Scotland) Bill:** The Committee will consider a paper from the clerk on the approach to Stage 1 of the Bill

Jennifer Smart
Clerk to the Committee
Room 2.5

email jennifer.smart@scottish.parliament.uk

The Following papers are attached for this meeting:

Agenda Item 3

Written submission from Scottish Parliamentary and Health Service Ombudsman
HC/01/30/1

Agenda Item 4

Paper from the Clerk on Petitions **HC/01/30/2**

Agenda Item 5

Paper from the Clerk with list of potential advisers for Organ Donation **HC/01/30/3**

Agenda Item 6

Paper on Tobacco Promotion and Advertising (Scotland) Bill **HC/01/30/4**

MEMORANDUM

THE SCOTTISH PUBLIC SECTOR OMBUDSMAN BILL

1. I welcome the opportunity to submit evidence to the Health and Community Care Committee of the Scottish Parliament as part of their consideration of the Scottish Public Sector Ombudsman Bill. This memorandum largely deals with issues already raised collectively with the Executive by the Scottish Public Sector Ombudsmen.

General

2. I broadly welcome the thrust of the proposals in the Bill. I will comment here only on those provisions of the Bill with which I see potential difficulties or where I wish to raise issues that I believe should be brought to the attention of the committee.

Working methods

3. I am concerned at the well-nigh exclusive emphasis in the Bill on investigation. The only substantive functions of the new Ombudsman mentioned in the Bill are to investigate and to report. Yet (taking the three existing schemes together) most cases are currently settled, and are likely to continue to be so settled, (thus accounting for most of expenditure of the office) in a way other than that to be provided for by statute. As the Bill stands, I believe that the new Ombudsman may be vulnerable to challenge, not only in the courts but also by the auditors, if he or she adopts the sort of working methods (such as informal resolution) that I believe to be appropriate.

Staffing

4. I have concerns about whether the position of the Ombudsmen's existing staff is properly protected; I am not persuaded that the Bill, as it stands, conforms to the Code of Practice on Staff Transfers in the Public Sector.

Parliamentary Corporation

5. I believe that there is a difficulty in the proposal that the Parliamentary Corporation should determine the pay, allowances, and pensions for the new Ombudsman and Deputy Ombudsmen. The Scottish Parliamentary Corporate Body is currently within the jurisdiction of the Scottish Parliamentary Commissioner for Administration, and would therefore presumably come within the jurisdiction of the new Ombudsman. It is widely regarded as objectionable for a body within an Ombudsman's jurisdiction to be able to determine his or her salary and conditions of service. Possible solutions would be:
 - i. to remove the Parliamentary Corporation from the new Ombudsman's jurisdiction; or
 - ii. to require endorsement by the Parliament of proposals from the Corporation.

Agenda item 4

Health & Community Care
Committee
5 December 2001

Health and Community Care Committee

5 December 2001

Petitions PE283, PE370 and PE406

Background

1. Following the Health and Community Care Committee meeting on 28 November, the Committee agreed to defer discussion of three petitions to allow members to consider the Report of the Independent Review Group on Retention of Organs at Post-Mortem.
2. The current position regarding PE406, which is a new petition, is attached at Annexe A.
3. The current position regarding the ongoing petitions, PE283 and PE370, is attached at Annexe B

Recommendations

4. The Committee is asked to consider the petition listed in Annexe A. If members decide to pursue this petition then time will require to be identified in the forward work programme.
5. The Committee is asked to note the current position regarding petitions shown in Annexe B. If the Committee wished to take any further action which may result in an inquiry time will require to be identified within the forward work programme.

Jennifer Smart
Clerk

ANNEXE A

Health and Community Care Committee

NEW PETITIONS – full papers attached

Number	Petitioner	Petition	Current Position
PE406	Margaret Doig	<p>Calling for the Scottish Parliament to redress the omissions concerning current law code of practice governing post-mortem removal and retention of organs, and disposal of the body parts, where the deceased has no relatives, as and when recommendations for changes in the law and codes of practice in relation to these matters are implemented.</p>	<p>The Public Petitions Committee agreed to refer the petition to the Health and Community Care Committee for further consideration with the recommendation that the HCCC establishes whether the Executive Review Group's examinations cover the specific issue of acquiring authority for post-mortem and treatment of organs of those with no relatives.</p> <p style="text-align: center;">or</p> <p>If this issue is not covered by the Group, that the H & CC Committee considers whether it should be brought to the Group's attention, or if it should be treated separately and comments invited from the Executive.</p> <p>N.B. publication of review group's final report announced on 23 November: http://www.scotland.gov.uk/pages/news/today2.aspx – press release makes no mention of position of deceased with no relatives. Report unavailable on website as of afternoon of 23 November: hard copies will be sent to members as soon as possible.</p>

ANNEXE B

Ongoing Petitions

Number	Petitioner	Petition	Current Position
PE 370	Lydia Reid on behalf of Scottish Parents for a Public Enquiry into Organ Retention	Calling for the Scottish Parliament to take the necessary steps to ensure that a full public enquiry is carried out into the issue of organ retention. etc.	<p>Referred by PPC, recommending that it be considered in conjunction with PE 283 drawing attention to the additional request made for an examination of the role of the Procurator Fiscal in relation to organ removal and retention following post mortems.</p> <p>The Committee considered petition on 19 September. Agreed to inform Professor Sheila McLean of this petition and to wait until the production of the McLean Report before considering the petition again. Publication of report announced 23 November – see notes to Petition 406 above.</p> <p>We have also received a letter from Ms Reid's organisation (now entitled The Guardian Angels) which is attached.</p>
PE 283	SORRO (Scottish Organisation Relating to the Retention of Organs	Calling for the Scottish Parliament to initiate a public inquiry into the practice of organ retention at post-mortem without the appropriate parental consent.	<p>The petitioner commented on the Executive's initial report. (Letter circulated 26 July 2001). The Executive was asked to supply any comments it had received and the Committee agreed to await the outcome of the Executive's inquiry.</p>

Committee noted petition on 19 September. Agreed to inform Professor Sheila McLean of this petition and wait until the production of the McLean Report before considering the petition again. Publication of report announced 23 November – see notes to Petition 406 above

We received a letter from SORRO, which is attached, regarding the report and the Committee's consideration of this petition.

SORRO

20 Pinmore Pl
New Hurllet
Glasgow
G53 7PS
27th Nov 01

For the Attention of the health and Community Care Committee.

We would like to make a final comment to the petition to which you are considering to-day 28th Nov.

As you will remember, SORRO presented their petition for a public inquiry into the Retention of Organs without consent last year, believing that a public enquiry was the only way forward to obtain answers to their many questions.

However after our meeting with the Health Minister, Susan Deacon, who instructed Professor Mc Lean to chair an independent review into the whole issue surrounding organ retention, we decided to take part in the review. Given the correspondence we have sent you, you will be aware of why we took part.

It is with that in mind we would like to explain our views on the Mc Lean Report. As you are aware our campaign has been on going for almost two years and throughout, we have always believed we would get justice for our dead babies by obtaining a change in the law and the reassurance that it would never happen again to any other parent. This has been achieved as the result of the recommendations of the Mc Lean Committee. We also believe that research can now begin again and that structure has been put in place for the medical profession to establish good practice and adhere to standards soon to be laid down by the Clinical Standards Board for Scotland. The Report has also addressed the demands parents made of the Minister and Professor Mc Lean that parents must have control of what happens to their baby after death. As you will see this report has looked at all the issues raised by parent groups and we will now focus our attention and efforts towards ensuring that recommendations go through parliament as quickly as possible, allowing the parents to have closure on what has been a traumatic experience for all.

The most important aspect coming out of the Mc Lean Report is that all Parent Support Groups have welcomed the report with open arms and endorsed its findings. In addition, I am pleased to note that the report was also endorsed by Lydia Reid of the support group 'Guardian Angels', who is quoted in the Glasgow Evening Times on the 23rd of Nov as saying of the report: " This is what we have been calling for."

OUR SENTIMENTS EXACTLY.

With that in mind we would like to thank-you for your help and support through out and would ask that you help us further by preparing the way for this report to go through its stages as quickly as possible.

Yours sincerely
Geraldine Mac Donald Chairperson of SORRO

Geraldine Mac Donald Chairperson SORRO

THE GUARDIAN ANGELS

25 CLERMISTON HILL
EDENBURGH
EH4 7DH
0131-336-3590

STAFFED BY VOLUNTEERS - CHARITY STATUS APPLIED FOR
Formerly Scottish Parents For A Public Enquiry into Organ retention

27 November 2001

Dear Health and Community Care Committee,

The parents in our organisation are terribly disappointed that you will not hear oral evidence from us. We still need so much help.

So many parents still do not know where the parts of their children are.

From the second part of the report parents say.

1. The five-year moratorium is not as it seems, after one year they say they will use the parts of our children still stored in hospitals.
2. If I stole a jacket from a shop would I be allowed to use it after one year and keep it after five years?
3. Many parents like me must leave the parts of our children in hospitals because of court cases. Many parents just have not gotten to the stage of grief where they can make enquiries. They may be abroad and just not know.
4. No independent person (Audit Scotland) has or will go into hospitals and make an independent check into stores of organs to find our children's organs.
5. No independent person (Audit Scotland) will go into hospitals to check the rooms and rooms of records, which hold information on our children and may hold information on where the organs of our children are.
6. The future looks better but far from perfect, the most important point being that so many parents are still being lied to and do not trust what hospitals are telling them. So many are still fighting and need help. If you as a committee refuse to give us an independent Inquiry you will be casting these parent adrift. They now see our Parliament of which I personally am very proud as an institution no better than Westminster in that the system is not democratic and the voices of the *real parents* affected by this issue have not been heard.

Lydia Reid

Lydia Reid

Chairperson